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COMMITTEE AGAINST TORTURE

Twentieth session

SUMMARY RECORD OF THE PUBLIC PART* OF THE 325th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 7 May 1998, at 3 p.m.

Chairman: Mr. BURNS

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The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 7) (continued)

Second periodic report of Guatemala (continued) (CAT/C/29/Add.3; HRI/CORE/1/Add.47)

1. At the invitation of the Chairman, Mr. Padilla Menéndez and Mr. Alonso (Guatemala) resumed their places at the Committee table.

2. Mr. PADILLA MENÉNDEZ (Guatemala) stressed the importance of continued cooperation with the Committee and other human rights bodies, particularly in view of the assistance they had already provided in the process of peacemaking and peace-building. Guatemala was still trying to decide which of the tasks before it, including how to deal with the problem of impunity, should take priority.

3. Turning to the points raised by the Committee, he said that the National Reconciliation Act made it clear that persons responsible for human rights violations would not be granted political amnesty and could and would be brought to trial. He could not refute the allegations in the press and elsewhere that the so-called "death squads" were still operating. It was up to the investigating bodies to determine whether they were true or not. It was a fact that persons who had committed outrages in the past had enjoyed impunity.

4. The term "delito" referred to all kinds of offence from minor infractions to serious crime. For that reason, the Government had seen fit to specify during its reform of the Penal Code, the punishment attached to various kinds of crime, for example enforced disappearances, and what constituted criminal behaviour. Thus, for instance, the rational and proportional use of force to quell a riot or disturbance was not a crime and could not be construed as such, since what was and was not admissible behaviour for the police was clearly defined in Guatemala's legislation. For the Committee, that might seem like mere semantics, but if it had any problem with that interpretation it should include its comments in its recommendations, on the basis of which the competent authorities could look again at the question and any other issues the Committee might wish to raise, including that of whether Guatemala would consider making the declaration under articles 21 and 22 of the Convention.

5. Mr. ALONSO (Guatemala) said that the United Nations Verification Mission in Guatemala (MINUGUA) would comment on cases referred to by the Country Rapporteur, Mr. González Poblete, including the "Mincho case" in due course.

6. With regard to lynchings, he agreed with MINUGUA's conclusion in its report (A/52/330) that not enough was being done by the competent authorities to investigate the crimes.

7. Progress was being made in coordinating action on the problem of street children, particularly through the Standing Committee for Children, and details would be provided to the Committee.

8. The disarmament and disbandment of the Voluntary Civil Defence Committees was being monitored and verified by MINUGUA. Of the approximately 200,000 persons who had been members of the Committees, only about 15,000 were still armed.

9. The trial of persons accused of taking part in a massacre in October 1995, involving a military patrol, had been transferred to a civil court which, it was hoped, would deliver its verdict in the near future.

10. The National Civilian Police were monitored by an internal body, the Office of Civil Responsibility. Cases of human rights violations were transferred to the Public Prosecutor's Office.

11. There were no figures by which to assess whether amendments to the Weapons and Munitions Act had led to an increase in offences, although it was clear that the number of weapons confiscated since the amendments had gone into force had risen considerably as compared with previous years.

12. The Unit to protect persons on trial and persons involved in the administration of criminal justice was not functioning as well as it might, for lack of resources and funds.

13. With regard to the new National Civilian Police and other analogous security bodies, he confirmed that the former military National Police had been abolished and its 2,000 members demobilized. All National Civilian Police officers must graduate from the National Civilian Police Academy either, in the case of former military police officers, on completion of a retraining course or, in the case of new recruits, on completion of initial training. There would therefore continue to be a shortage of police officers until the training and retraining process had been completed. In the meantime, the Guatemalan armed forces were collaborating in policing activities, an arrangement that had not been criticized by any domestic or international human rights monitoring body. The operations in question were always coordinated by an authority representing the National Civilian Police and they would cease as soon as the full complement of trained police officers had taken up their duties.

14. The Government was aware that the resources available to the Human Rights Procurator were inadequate despite the 10 per cent increase in the 1998 budget appropriation.

15. Following the assumption of office by a civilian Government in 1985 after years of military dictatorship, Guatemala had ratified the main United Nations human rights instruments and renewed its presence in international human rights forums. Nine years had passed, however, before the authorities had submitted their first report in fulfilment of the obligations incurred under those instruments. Owing to their total lack of experience and the difficulty of obtaining the requisite data, its drafters had relied heavily on advisory support from the United Nations Centre for Human Rights. However, the Government was henceforth committed to the submission of all reports in good time and in strict compliance with its obligations. In 1996 a special forum within the Presidential Commission for Coordinating Executive Policy in the field of Human Rights (COPREDEH) had been assigned

responsibility for gathering material for the preparation of reports. The forum met each month with representatives of competent public-sector bodies, who reported on progress and difficulties. There were also plans to involve representatives of civil society and of non-governmental organizations (NGOs) in the drafting process.

16. He assured Mr. Sørensen that he would provide him with a copy of the final report of the high-level commission established to monitor the inquiry into the Bishop Gerardi case. The initial allegation that public opinion had been manipulated in connection with the case had been refuted since it had emerged on closer scrutiny that the President, when announcing the establishment of the Commission, had clearly indicated that it was merely monitoring an investigation to be conducted by the National Civilian Police under the supervision of the Public Prosecutor's Office.

17. With reference to Mr. Sørensen's interpretation of the wording of article 201 (bis) of the Penal Code regarding the crime of torture, it should not be taken to imply that the author of an act of torture could evade punishment by stating that he was acting on orders from a higher authority. Such a defence was not recognized either by the Convention or by the Constitution of Guatemala. Nobody who had carried out manifestly illegal orders could plead innocence. The presumed author of the offence would, of course, be required to specify in such cases who had issued the order so that he could also be brought to justice. Mr. Sørensen's point would in any case be considered very carefully and any suggestions made by the Committee would be taken into account.

18. The delegation had no figures for the number of persons currently held in places of detention but the relevant statistics would be transmitted to the Committee at a later date. The Inter-American Commission on Human Rights had recently requested the Government to take protective measures on behalf of a group of some 10 persons in Sololá Departmental Prison who had alleged inhuman treatment due to overcrowding and unhygienic conditions. The Minister of the Interior had immediately sought temporary new premises for the detainees and released resources for the construction of a prison in which conditions would be in keeping with Guatemala's human rights commitments. Unfortunately, overcrowding was still a widespread problem in detention centres. The food situation was improving. Corrupt practices in the purchase and preparation of foodstuffs in certain prisons had been remedied by the Ministry of the Interior through the conclusion of new contracts with caterers in the private sector in February 1998.

19. With regard to the alternatives to custodial measures, it was certainly not the intention of Guatemalan legislators to fill up detention centres by ruling out alternative measures. The object of the amendment to the Code of Criminal Procedure referred to by a member of the Committee had been to prevent persons accused of serious crimes from abusing certain remedies available under Guatemalan law. In the case of pre-trial detention, the Code of Criminal Procedure had recently been amended so as to reduce the duration of preparatory proceedings from six to three months and, in exceptional cases, to one month.

20. The delegation was unable to provide the information requested on the training of prison staff, the contents of curricula and the question of in-service training. However, COPREDEH organized training courses and lectures on human rights for National Civilian Police officers, prison guards, army officers and other security personnel.

21. The Supreme Court of Justice was elected by the Congress of the Republic from a list of 26 candidates proposed by a Nominations Committee composed of university vice-chancellors, the deans of the law faculties of each university, representatives elected by the General Assembly of the College of Lawyers and Notaries, and representatives elected by the judges of the Appeals Court. The 13 Supreme Court judges were elected by a two-thirds majority of the Nominations Committee. They then elected a President for a one-year term. The Appeals Court judges were also elected by the Congress of the Republic from a list compiled by a Nominations Committee composed of deans of law faculties and a representative of the College of Lawyers and Notaries. Judges of first instance and justices of the peace were elected through an internal Supreme Court procedure. A new Attorney-General had recently been elected and would take office on 18 May 1998. The election procedure was similar to that for Supreme Court and Appeals Court judges. The Nominations Committee submitted a list of six candidates to the President of the Republic who took the final decision. The procedure was different for the Government Procurator, who was a public official appointed by the President of the Republic.

22. Reports to human rights treaty bodies had not hitherto been made public but the recommendations of the Committee against Torture following its consideration of Guatemala's initial report had been publicized. A press conference had been held and copies distributed to the media. In future all documents intended for human rights treaty bodies would be circulated widely.

23. Activities in the areas of rehabilitation and compensation were mainly linked to the sequelae of the internal armed conflict, and in that regard the National Reconciliation Act provided for the establishment of a commission to determine compensation to victims, under the Ministry of Peace. COPREDEH had initially proposed a nationwide survey to determine the number of whereabouts of the victims, particularly in Verapaz, which was the area most affected by the conflict. The Government hoped to make a start on compensating the victims in conformity with the National Reconciliation Act.

24. There were also some cases which had been referred to the Inter-American Commission on Human Rights and in which Guatemala had agreed to amicable settlements. One case, regarding the death of a Civilian Patrol member in Colotenango had already been resolved, and an amicable settlement was pending, in another case, relating to an eviction from a plantation in Quetzaltenango department. There were other cases as well in which the Government had expressed its interest in reaching an amicable solution, without prejudice to the continuance of proceedings still pending against the perpetrators of human rights offences. Sentence had already been passed in the Colotenango case against several former members of the Civilian Patrol for their deplorable acts during the armed conflict.

25. The National Reconciliation Act was not applicable to any case involving violations of human rights or in connection with the internal armed conflict. To date, it had been applied to only three cases, at the request of former members of the Guatemalan National Revolutionary Unit Movement (URNG). There was a well-known case of several soldiers who had been tried for causing the death of the anthropologist Myrna Mack Chang, and who had repeatedly been denied the benefits of the Act, but as far as the Government knew, it had never been applied abusively.

26. The delegation would convey to the authorities the Committee's wishes regarding the International Day in Support of Victims of Torture and Guatemala's contribution to the United Nations Voluntary Fund for Victims of Torture.

27. In reply to the concerns expressed by Mr. Mavrommatis, human rights culture in Guatemala was still in its infancy, but the Government was sure it was on the right path to building and broadening respect for human rights among all Guatemalans.

28. COPREDEH had been created in 1991 and begun functioning in 1992. It was chaired by Dr. Christian Tomuschat, who had been an independent expert of the Commission on Human Rights on the situation of human rights in Guatemala and was General Coordinator of the Commission to Clarify Past Human Rights Violations. He had conceived of COPREDEH as a coordinating body which would provide a unified response by the entire governmental system to its international commitments in the field of human rights, as, despite the fact that Guatemala had ratified many international human rights instruments, the only previous governmental response to those commitments had been a small unit of two persons within the Ministry of Foreign Affairs to deal with human rights matters. The Commission had been created thereafter with an Executive Board comprising the Minister of National Defence, the Minister of the Interior, the Minister for Foreign Affairs, and the Attorney-General of the Republic, and a personal representative of the President, Ms. Marta Altolaguirre, as coordinator. That was how the Commission had functioned originally. Later, the Organic Law of COPREDEH had been amended, expanding the Commission to include the Coordinator of the Government Peace Commission, who was in charge of negotiating the peace process. Later still, the Procurator-General of the Republic had been added to its members. With the Agreement signed on 29 December 1996, the Peace Commission had automatically been abolished, and therefore its representative no longer served on the Commission. The Agreement had also created the Ministry for Peace, but it had not yet been given a seat on the Commission as its functions were not deemed to have any relation to the Commission's purpose.

29. The main function of the Commission was to monitor the observance of human rights among the units of the Executive concerned. It had no powers to investigate or to receive complaints. It tried to strengthen the powers of the Procurator for Human Rights, whose functions were quite different. The Government thought of the Procurator as an external auditor of the work done by the Executive in the field of human rights and of the Commission as an internal auditor. The Commission's activities would, it was hoped, leave the Procurator with less work to do on violations. The Commission's functions and composition might soon be redefined, but the project was still in draft form.

30. The Financial Police, which was due to be abolished, was responsible for investigating all offences or crimes that might damage the economic interests of the State, including smuggling, drug trafficking and illegal cropping; the new National Civilian Police would have the task of dissolving it. The premises of the former Mobile Military Police had been taken over for the National Civilian Police school, and the Government hoped to do the same with the premises of the former Financial Police.

31. A question had been asked about the "military commissioners" and their "demobilization", which he put in quotes because many of them were said to remain armed. It was true that many of them had kept their weapons, firstly because they were their own property and secondly because they had been authorized to do so in consideration of their status. The weapons situation was currently changing, however: it had been made illegal to bear arms without a permit from the Department of Weapons and Munitions Control. There were several cases of former Commissioners who had been remanded in custody or indicted for committing offences on that count. The Government deliberately did not speak of the former Civilian Patrols or military commissioners because they had ceased to belong to the armed forces and were civilians who must comply with the law or face prosecution.

32. The delegation of Guatemala withdrew.

The public part of the meeting was suspended at 4.30 p.m. and resumed at 5.45 p.m.

Conclusions and recommendations of the Committee

33. At the invitation of the Chairman, Mr. Padilla Menéndez and Mr. Alonso (Guatemala) resumed their seats at the Committee table.

34. The CHAIRMAN invited the Country Rapporteur to read out the conclusions and recommendations adopted by the Committee concerning the second periodic report of Guatemala.

35. Mr. GONZÁLEZ POBLETE (Country Rapporteur) read out the following text:

"The Committee considered the second periodic report of Guatemala (CAT/C/29/Add.3) at its 324th and 325th meetings, on 7 May 1998 (CAT/C/SR.324 and 325) and adopted the following conclusions and recommendations:

A. Introduction

1. Guatemala acceded to the Convention on 5 January 1990. It has not submitted the declarations provided for under articles 21 and 22 of the Convention.

2. Guatemala is also a State party to the Inter-American Convention to Prevent and Punish Torture.

3. The report was submitted on 17 February 1997 and covers the period between 31 July 1995, when the first report was submitted, and 30 August 1996. During the Committee's consideration of the report, the Guatemalan delegation gave updated information in its oral presentation and submitted an addendum containing information covering the the period between 1 January 1997 and 31 March 1998.

4. The Committee's work was complicated by the fact that the report does not adhere to the general guidelines adopted by the Committee on the form and content of periodic reports, which stipulated that reports should follow the order of the articles of the Convention (arts. 1 to 16).

B. Positive aspects

1. The Agreement on a Firm and Lasting Peace, signed on 29 December 1996, which ended the prolonged armed conflict.

2. The elimination of all State-promoted policies that violate human rights.

3. The proclaimed wish of the State authorities to promote a thorough reform of the administration of justice and of public security, with a view to rectifying the shortcomings of the Judiciary, the Public Prosecutor's Office and the National Police.

4. The demobilization of the Voluntary Civil Defence Committees, whose members were reported in the past to have committed the most serious violations of human rights.

5. The restriction of military jurisdiction to essentially military crimes and misdemeanours and consequent transfer to ordinary courts of all proceedings against members of the armed forces for ordinary crimes and similar acts.

6. The demilitarization of the police forces and the start made on restructuring them into a single National Civil Police with the disbandment of the Mobile Military Police and the professionalization of the police function through the establishment of the Police Academy where anybody wishing to join the force, obtain promotion or specialize must undergo training. The Committee noted with satisfaction that the training of members of the police will henceforth include, as a priority subject, the study of human rights and the analysis of the principal international instruments in this sphere, in accordance with the provisions of article 10 of the Convention.

7. The implementation of intensive training programmes in substantive criminal law for serving judges and the strengthening of the College of Legal Studies to ensure that posts are filled by the best-qualified judges, through a selection process based on objective technical criteria.

8. The process of purging the National Police and the Financial Police through the dismissal of members suspected of involvement in human rights violations.

9. The raising of the minimum age for bearing firearms to 25 years.

10. The numerical reduction in the strength of the armed forces.

C. Factors and difficulties impeding the application of the provisions of the Convention

1. Continued grave qualitative and quantitative weaknesses in the Judiciary, the Public Prosecutor's Office and the Police, which are the State institutions responsible for ensuring the safety of persons and laying the foundations for the functioning of a State which will respect and guarantee human rights.

2. The repeated instances of intimidation of judges, prosecutors, witnesses, victims and their relations, human rights activists and journalists, which largely accounts for the absence of decisive action by the bodies that should investigate and try crimes and for the continuance of impunity. Article 13 of the Convention makes States responsible for the protection of victims and witnesses.

3. The delay in putting into operation the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice.

4. The inadequacy of the funds allocated by the State to the Human Rights Procurator, which limits his activities in the investigation of alleged human rights violations by State agents, and in the promotion of a culture of tolerance and respect for these rights, at a time in the country's history when particular importance should be attached to those functions.

5. The spread in Guatemalan society of a deep-rooted culture of violence, which it has not proved possible to reverse.

D. Subjects of concern

1. The persistence of impunity for crimes, particularly grave human rights violations.

2. Although the number of reports of torture has declined there are still problems due to incompetence in the Public Prosecutor's Office, the Judiciary and the Police, which are the State bodies responsible for investigating such reports, identifying and arresting the perpetrators and bringing them to trial.

3. The increase in the number of reports of cruel, inhuman or degrading treatment by State agents.

4. The proliferation of unlawful possession of weapons by private individuals, which is largely responsible for the high levels of criminal violence that seriously jeopardize the safety of citizens and undermine confidence in the institutions of the rule of law.

5. The faulty definition of the crime of torture in article 201-A of the Penal Code, which is not consistent with article 1 of the Convention.

E. Recommendations

1. Intensification of efforts to elucidate past grave violations and to ensure that such situations do not recur. Articles 11 and 12 of the Convention require that the State should proceed ex officio to a prompt and impartial investigation of any report of torture.

2. Completion of the process of setting up a single National Civil Police, with the disbandment or demobilization of the Financial Police.

3. Continuance of the process of reducing the number of permits to carry firearms to the strictly essential minimum.

4. The putting into operation as soon as possible of the Service for the Protection of Persons involved in Proceedings and Persons connected with the Administration of Justice.

5. The allocation to the Human Rights Procurator of the necessary funds for effectively carrying out, throughout the national territory, the functions and duties assigned to and enjoined upon him under the Constitution and the law.

6. Harmonization of article 201-A of the Penal Code with the definition of torture contained in article 1 of the Convention.

7. The Committee reminds the State authorities that their representatives informed it, during its consideration of the Initial Report, that the process of preparing the declaration referred to in article 22 of the Convention had been initiated and that in their view no obstacles existed to completing the process.

8. The prompt submission, if possible during the coming year, of the Third Report, the form and content of which should comply with the previously-mentioned guidelines on the presentation of reports."

36. The CHAIRMAN thanked the delegation of Guatemala for the abundance and clarity of the information it had laid before the Committee, reflecting the depth of the changes that were being made in that country, and for the spirit in which that information had been submitted.

37. Mr. PADILLA MENÉNDEZ (Guatemala) thanked the Committee and the Country Rapporteur for the opportunity to report on the situation in Guatemala, and for their acknowledgement of the progress that had been achieved. The conclusions and recommendations would be transmitted to the Government for

implementation as the prevailing circumstances allowed, with priority for the timely submission of the third periodic report and the recommendations pertaining to articles 1-16 of the Convention.

38. Mr. ALONSO (Guatemala) undertook to keep the Committee informed of progress in implementing its recommendations. Guatemala would persevere in its efforts to eliminate not only torture but also other cruel, inhuman or degrading treatment or punishment, both nationally and throughout the region.

39. The delegation of Guatemala withdrew.

The meeting rose at 6 p.m.